

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AMERICAN TRUCKING  
ASSOCIATIONS, INC.

Plaintiff-Appellant,

v.

THE CITY OF LOS ANGELES, THE  
HARBOR DEPARTMENT OF THE  
CITY OF LOS ANGELES, THE  
BOARD OF HARBOR  
COMMISSIONERS OF THE CITY  
OF LOS ANGELES,

Defendants-Appellees,

NATURAL RESOURCES DEFENSE  
COUNCIL, INC., SIERRA CLUB;  
COALITION FOR CLEAN AIR,  
INC.,

Defendant-intervenors –  
Appellees.

Case No. 10-56465

**UNOPPOSED MOTION FOR  
EXPEDITED BRIEFING SCHEDULE  
UNDER CIRCUIT RULE 27-1**

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Appellant American Trucking Associations, Inc. (“ATA”) hereby moves for an expedited briefing schedule advancing the presently set schedule by two months. ATA’s request is supported by the appellees, The City of Los Angeles, The Harbor Department of The City of Los Angeles, and The Board of Harbor Commissioners of The City of Los Angeles Port of Los Angeles (collectively “POLA”) and the intervenor-appellees, Natural Resources Defense Council, Inc., Sierra Club, and Coalition for Clean Air, Inc. (collectively “NRDC”).<sup>1</sup>

This is the third time this matter has been before this Court. The two prior appeals were from orders following ATA’s request for a preliminary injunction against implementation of the Concession Agreements of POLA and POLB which were part of a comprehensive program that would bar from entry to the Ports any of the then approximately 1,300 motor carriers (which in turn subcontract with some 17,000 independent truck owner-operators) at that time serving the ports unless the motor carrier executed the ports’ respective Concession Agreements. Among the requirements placed on motor carriers subject to the POLA Concession Agreement are:

- a. A phased-in prohibition against the use of independent owner-operators in the transportation of containers to and from the Port, thereby establishing over time a mandate for the use of only employee-drivers.
- b. A requirement for an off-street parking plan for all motor carrier fleets operating at the Port;
- c. Utilization of POLA-mandated placards on each truck; and

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<sup>1</sup> The City of Long Beach, The Harbor Department of The City of Long Beach, and The Board of Harbor Commissioners of The City of Long Beach (collectively “POLB”) are not parties to this appeal, as a resolution of ATA’s claims against POLB was reached during the course of the underlying litigation.

- d. Submission of documentation to confirm the motor carrier meets POLA's standards of financial capability to perform its concession agreement obligations.

Following the second appeal, resolution was reached between POLB and ATA. The litigation between POLA and ATA continued through trial. Ultimately, the District Court found in favor of POLA and dissolved the preliminary injunction, thus permitting POLA to move forward with implementation of its Concession Agreement. ATA promptly appealed from the adverse judgment. ATA also sought and obtained a stay of enforcement of a portion of the judgment (specifically, the issue identified in point (a) above), thus again obtaining an injunction against POLA's enforcement of the employee mandate in its Concession Agreement.

It is the position of ATA that the POLA Concession Agreement compels motor carriers to fundamentally change the business structures under which they have, in some cases for decades, provided service to customers shipping cargo through the Port of Los Angeles, and thereby affects motor carrier prices, routes, and services in a manner that is federally preempted under the Federal Aviation Administration Authorization Act of 1994 (the "FAAA Act"), 49 U.S.C. § 14501(c), in violation of the Supremacy Clause of the United States Constitution.

POLA and NRDC contend, as found by the District Court, that the Concession Agreement is an act of a proprietor that falls within the market participant doctrine, and therefore not subject to federal preemption. POLA thus seeks affirmance of the District Court's judgment (which would also dissolve the injunction pending appeal) allowing POLA to proceed with its entire Concession Program. POLA and NRDC contend that without full implementation of the

Concession Agreement POLA's business goals cannot be achieved or sustained over the long term.

It is in the interest of all parties and the public to have a prompt resolution of the issues raised in this appeal. Motor carriers face implementation of many of the elements of the Concession Agreement in the coming months that will be administratively burdensome, financially costly, and will be, in Appellant's view, in derogation of their federal rights. Moreover, those carriers will remain under a cloud as to possible imposition of the employee mandate creating uncertainty which will adversely affect their businesses. On the other hand, POLA will be prohibited from enforcing its employee requirement during the appeal process, which, under its view, will adversely affect certain program objectives and long term sustainability of its entire program. Consequently, both parties seek an expedited resolution of this appeal so as to mitigate the harm to the ultimately prevailing party.

Therefore, it is their joint request that the Court expedite the briefing schedule by two months, so as to allow oral argument as soon as practicable. Per a scheduling order issued on September 16, 2010, the Court has established the current briefing schedule to permit the filing of the opening brief not later than February 28, 2011, the answering briefs by March 30, 2011, and the reply brief within fourteen days of the Appellees' answering briefs. Expedition is warranted so that a necessary level of certainty can be reached on the terms under which motor carriers can serve their customers when draying containers to and from the Port of Los Angeles.

The requested expedited schedule would permit the filing of the opening brief not later than December 28, 2010, the answering briefs by January 31, 2011, and the reply brief within fourteen days of the Appellees' answering briefs.

**CONCLUSION**

Wherefore, ATA respectfully requests this Honorable Court to GRANT its motion and expedite the briefing and hearing schedule by two months.

Respectfully submitted,

Dated: November 2, 2010

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By: s/ *Christopher C. McNatt, Jr.*  
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CERTIFICATE OF SERVICE

I, hereby certify that on November 2, 2010 I electronically filed the forgoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. Upon their written consent I have e-mailed the forgoing to the following non-CM/ECF participants (some listed persons may also be CM/ECF participants):

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